

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROYAL INSURANCE COMPANY	)	
OF AMERICA, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Civil Action No. 00-2128
	)	
v.	)	Magistrate Judge Caiazza
	)	
LATROBE CONSTRUCTION	)	
COMPANY,	)	
	)	
Defendant.	)	

**ORDER**

The Defendant's Motion (Doc. 159) will be denied.

Federal Rule of Civil Procedure 54(b) is unavailable because damages have yet to be determined. *See Pemberton v. State Farm Mut. Auto. Ins. Co.*, 996 F.2d 789, 791 (5th Cir. 1993) (judgment that determines liability but does not fix amount of damages is not appealable under Rule 54(b) because said rule “applies only to judgments that dispose of the entirety of one or more claims”) (citations omitted, emphasis added). Alternatively, the Rule 54(b) request is denied as a matter of the court’s discretion. *See generally In re Diet Drugs*, 401 F.3d 143, 161-62 (3d Cir. 2005) (under Rule 54(b), court should remain mindful of “undesirability of piecemeal appeals”) (citations and internal quotations omitted).

The court also declines to certify its Findings and Conclusions under 28 U.S.C. § 1292(b). The court is unconvinced that its ruling(s) present “a controlling question of law as to which there is substantial ground for difference of opinion” and/or “that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” *See id.*

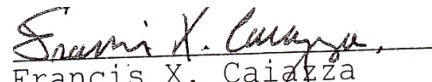
More generally, the court finds an absence of circumstances warranting an invocation of this “rare exception to the final judgment rule that . . . prohibits piecemeal appeals.” *See Koehler v. Bank of Bermuda Ltd.*, 101 F.3d 863, 865 (2d Cir. 1996).

Finally, the court declines the Defendant’s request for reconsideration and/or amendment regarding Werder. *See* Def.’s Mot. at 5-8 (citing Fed. Rs. Civ. P. 52(b) & 59(e)). To the extent Latrobe and its expert raised criticisms of this file at trial, the court’s Findings and Conclusions adequately addressed them. To the extent such criticisms were not meaningfully raised or articulated, they have been waived.

For these reasons, the Defendant’s Motion (**Doc. 159**) is **DENIED**.

IT IS SO ORDERED.

January 23, 2006

  
Francis X. Caiazza  
U.S. Magistrate Judge

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